9:Fosbrooke G-5 (1936-1948) 1948 FL12 Masai FL12
Kisonko

choice resting on the general consent of the tribe. He whom the previous laibon had held in greatest esteem, and trained and nominated for the office, would normally be chosen. The past reputation of the candidate would, however, be a matter for consideration; if someone, other than the deceased's choice, had proved himself extremely powerful, it is possible that he would be chosen, for fear of the consequences were he overlooked. The maxim of English law, that none should benefit by his crime, is also applied. For the death of a laibon is as a matter of course attributed to witchcraft by a fellow Engidong, and the first step in choosing a new laibon is to ascertain who killed the old; such person is automatically barred from succession.

It has been represented that the above theory of late development of the institution stands or falls on a Masai legend. The answer to that is that very few legends are found without some foundation of fact, and secondly that there are many indications that it is a feature not fully assimilated by the Masai organisation.

B. **Pre-European Functions of the Laibon: Raids and War — Age-grade ceremonies (with certain restrictions) — local ceremonies — tribute — supposed administrative actions.**

Immediately prior to his death in 1890 Mbatian was living at Namanga, but had previously lived, as had his father Subet (8), at Lashaine Hill, immediately below the Mondul District Office. He was nominally the official laibon for the whole of the tribe, though his brother Mako lived and practised as a laibon at Engutoto lol Mako, in Ngorongoro Crater. It is also significant that Thomson refers to "the important Lybons (medicine men) Lengobe, Mbaration, and Lembarsacout," without singling out Mbatian as the leader. If he in fact occupied the position, bordering on chieftainship, that many Masai elders would have us believe, it is improbable that even an early traveller would fail to note and comment on it.

There can be little doubt that at this time a laibon's chief functions were:

i. Dispensing charms for raids.
ii. Supervising and blessing the age grade ceremonies.
iii. Propounding the ritual and giving charms for local ceremonies, concerned with fertility and disease (both human and bovine) and with rainfall.

It is probable that any acts which he performed in the executive sphere arose from these three main duties, which must now be examined more fully.

In the matter of providing *charms for raids*, it should be noted that raids are divided by the Masai into two types, major (ol *orora*), and minor (ol *tomba*). Both these names also signify a group of moran fitted out for war, the former larger than the latter. A third term, which might well be recorded here is *o remore*, signifying a fight with spears, more particularly the deliberate killing of an alien for the purpose of acquiring a reputation.

13:Huntingford E-4 (no date) 1953 FL12 Masai FL12

from each side suckled each other's babies. Peace was then kept till it suited one side to break it. With Bantu tribes the Masai sometimes made mock blood-brotherhood with intent to deceive, for they have no blood-brotherhood of their own. As among the Nandi, grass is a sign of peace, and a handful of grass constitutes a plea for mercy recognized by the Masai and those whom they count as more or less their equals, the *Il-magati os* " enemies," such as other pastoralists, but not *Il-mosh*, the Bantu agricultural tribes.

Legal Sanctions

The Masai legal system seems to be less organized than that of the Nandi, and to depend even more on the force of public opinion than on the position and status of the council leader. It appears that only in cases of homicide is there anything like a regular procedure. The Masai distinguish between intentional and accidental homicide, the difference being that for the latter there is no blood feud and the amount of compensation is smaller. The number of blood-cattle paid as compensation, *in-kishu oo-l-oikop*, " murder cattle," varies, but may be as high as two to three hundred for a man; Hollis says 50 for a boy, and Merker 19 head of cattle and 19 goats and sheep for a woman. Fosbrooke gives the figures as 49 for a circumcised man, and 29 for a woman or uncircumcised man. The Il-Arusa are recognized as a group which pays and receives blood-cattle. The murder may be avenged by the dead person's brothers who may try to kill the murderer; and if compensation is not paid, the resulting feud may involve all agnatic kinsmen on both sides. It is not clear whether killing of the murderer makes the avengers also liable to compensation. If the victim belongs to the same sub-clan as the murderer, no compensation is payable. If they belong to different sub-clans of the same clan, or to different clans, all members of the murderer's sub-clan contribute, and the cattle are divided among the members of the victim's sub-clan after his senior brother has received half the stock. When a settlement has been made, peace is made between the families concerned by an exchange of garments. Maguire gives details of three methods of dealing with cases of murder. (1) The relatives of the victim take all the murderer's cattle; they hold a council and, after giving a few cattle to certain elders and old women, the bell-oxen, herd-leaders, and cows near calving are returned to the owner; the rest they divide among themselves. (2) If action is not taken at once, the relatives of the murderer send a stick to the relatives of the victim, the acceptance of which implies an agreement to meet and settle the matter, and compensation is arranged, the figure named being 40 head of cattle, with nine more added to symbolize the human body (reckoned by the number of its orifices). (3) Sometimes the relatives of the victim do not take action for two years or more; they then raid the murderer's kraal by night and demand the number they want. For killing a smith, *ol-kunoni*, no compensation was payable, nor was there a blood feud. If a smith killed a Masai, several warriors set out and killed several smiths. Theft (except of cattle) is apparently considered of little account: " if a Masai steals milk or meat or other small things, he is not fined. Grown-up people rarely steal," says Hollis. For cattle thefts, the thieves when caught were fined, seven head from each man concerned.

The general principle that a man is entitled to compensation for a wrong suffered is recognized by all Masai; and this recognition is extended to " foreigners " like Dorobo, provided the people concerned are well known to each other. On being accused, a man may submit to an oath, *ol-mamai*. In some cases a diviner of the type called *ol-goiatiki* by Merker is employed to find a guilty person. The whole subject of Masai legal institutions needs detailed investigation.

Modern Administration

The Masai political structure has proved even more difficult of adaptation than that of the Nandi, since it lacked the clear-cut *porwiot* divisions of the latter. Up to 1918 the chief laibon in Kenya was accepted by the Administration as a paramount

/211 cont./

XXII.

000 Law. -- Concerning family and personal rights. cf. 2nd Part. II. IV. and XX. -- Property rights. -- Things found. -- Barter or purchase. -- Liability of the relatives for debts, gift. -- Penal law. -- Murder and manslaughter. -- Revenge. -- Composition. -- Negligent homicide. -- Bodily injury of various degrees. -- Accomplices. -- Immoral offenses. -- Suicide. -- Kidnapping. -- Theft. -- Treason. -- Arson. -- Cowardice in war. -- Death penalty. -- Fines. -- Degrading punishment of warriors. -- Compensation for innocent accused persons. -- The mentally ill. -- Warning. -- Legal proceedings. -- Courts. -- Example of a /213/ criminal case. -- Inquiry about an unknown culprit: -- Pleading. -- Swearing to the truth. -- Torture for exacting the truth. -- Ordeals in the search for truth. -- Sorcery procedures. -- No international prosecution of criminal deeds.

• 671 An awareness and understanding of justice are very little developed among the Masai. Therefore only a small number of customary
[184] legal provisions exist, which are by no means uniform for all Masai,
[361] but rather often enough vary in the different districts. As nomads, among whom individual families frequently live alone or with their closest relatives in a kraal, by themselves, without having neighbors in the larger vicinity, they make do with fewer laws than another tribe whose numerous members are supposed to live within definite fixed limits in permanent order and peace. Furthermore, the nomadic life in and of itself leads to a freer conception of life, which opposes tutelage through laws and often prefers to let might
[593] come before right. But in order to understand the great inconsist-
[619] ency in individual legal decisions, one must above all take into
[186] consideration the feeling of solidarity, which is strongest in the family and always still strong enough in the tribe to arouse from the first great prejudice against anyone who does not belong to the
593 tribe. The questions concerning family and personal rights have